Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the	)	
Telecommunications Act of 1996:	)	
	)	
Telecommunications Carriers' Use	)	CC Docket No. 96-115
of Customer Proprietary Network	)	
Information and Other	)	
Customer Information	)	

REPLY COMMENTS OF AMERITECH

Ameritech submits these reply to comments on its petition for reconsideration or forbearance and clarification and the petitions of other parties filed with respect to the Commission's Second Report and Order in this proceeding.[1]

I. CPNI INFORMATION SERVICES, AND BUNDLES.

In the many comments filed on the petitions, there is almost universal support for those requests for the Commission to reconsider its conclusion that the statute prohibits the use of CPNI to market CPE and information/enhanced services related to a carrier's telecommunications offerings – or otherwise to forebear from the application of that prohibition.[2]

Nonetheless, MCI is most vocal in its opposition to the proposal. In particular, it has opposed the position of Ameritech and others that CPE and related information service offerings should be considered part of a customer's "total service" relationship with her carrier, arguing

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[1] *In the Matter of Implementation of the Telecommunications Act of 1996; Telecommunications Carriers' Use of Customer Proprietary Information and Other Customer Information,* CC Docket No. 96-115, Second Report and Order and Further Notice of Proposed Rulemaking, FCC 98-27 (released February 26, 1998) ("Order").

[2] *See, e.g.,* CellPage, Frontier, Cable and Wireless, GTE.

that neither CPE nor information services are "telecommunications services" within the meaning of §222(c)(1)(A).[3] In this objection, MCI misses the point. As Ameritech has noted in its petition, the Commission's own "total service approach" contemplates the use of CPNI with the customer's implied consent for purposes other than the provision of the telecommunications service from which the CPNI was derived. However, the Commission unnecessarily limited this application of implied consent only to other telecommunications services. Rather, in the case of CPE and certain information services such as voice mail that are reasonably related to the carrier's telecommunications service offerings, that consent should be implied as well because of customers' expectations about products and services that they should be able to obtain (if they so choose) from their telecommunications carrier.

If CPNI is used to market the telecommunications service from which it was derived, no customer consent is required at all. Conversely, if CPNI is used to market a product or service that is not the telecommunications service from which the CPNI is derived, then consent is required. However, that consent can be implied from the nature of the carrier/customer relationship and should not necessarily be limited to telecommunications services. Since customers usually know nothing of what might technically be defined as a "telecommunications service" for the purpose of the Communications Act, their expectations about the extent of the carrier/customer relationship are not limited to products and services that satisfy that definition. Thus, if the Commission is going to rely on the concept of implied consent for a use consistent with the carrier/customer relationship – and Ameritech asserts that it is appropriate for the Commission to do so – then that consent should be inferred consistent with customers' expectations, which are not necessarily limited to other telecommunications services.

MCI's argument against Ameritech's reconsideration request with respect to packages or

[3] MCI at 32, 41.

bundles that include out-of-category elements[4] similarly misses the point. While Ameritech agrees that §222 has certain competitive aspects, those aspects are specifically enumerated.[5] Rather, the primary purpose of the provision – especially §222(c)(1) -- is to preserve customer privacy. The Commission's well-considered "total service" concept attempts to create a reasonable balance between overly harsh restrictions and natural customer expectations about their carrier/customer relationships.

That bundles with out-of-category elements fit within these natural customer expectations can be demonstrated by an example: If a carrier offered both CMRS and wireline long distance service develops a package that bases discount levels on total combined wireless and long distance usage, it is likely that many of that carrier's customers, who are only its customers for either CMRS or long distance but not both, would like to know about the possibility of lowering their communications bill. In fact, those customers might even be upset if the carrier told only those customers who had both its wireless and its long distance service.[6]

Instead, the Commission's "total service" concept should also be regarded as including bundles or packages that reasonably combine out-of-category components with the in-category service that is being marketed since that would reasonably comport with customers' expectations of "total service."

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[4] MCI at 2-14. MCI's concerns about carriers' leveraging into new markets is dealt with by other parts of the statute – *e.g.*, §§271-272 regarding BOC entry into in-region interLATA services. Interestingly, in February, 1999, MCI may begin unrestricted joint marketing of its long distance services with resold local exchange services. (§271(e)(1)).

[5] *E.g.*, §§202(c)(2), (c)(3), and (e), dealing with disclosure to any person designed by the customer, with aggregated CPNI, and with subscriber list information.

[6] Under the Commission's current rules, the carrier probably could inform its CMRS customers of the discount levels that their CMRS usage could generate; but the carrier could not tell them that, if they purchased the carrier's wireline long distance service, that usage would count toward determining discount levels as well – a restriction that seems nonsensical.

II. ELECTRONIC AUDIT REQUIREMENTS.

There is significant support for carriers' requests for the Commission to reconsider its electronic audit requirements.[7] The overwhelming evidence shows that, because of the significant expense and complexity of complying with the Commission's requirements if literally read, the Commission should move quickly in granting the petitions with respect to those requirements or, at a minimum, grant a stay of its electronic audit requirements until at least 8 months after it rules on the petitions. As noted in Ameritech's comments, in that way, the Commission can help assure that massive expenditures are not incurred in a potentially needless effort. This is especially critical when many carriers have to focus information technology efforts on "Year 2000" and local number portability requirements.

III. WIN-BACK.

Certain commenting parties continue to insist that the Commission's prohibition against the use of CPNI in a win-back context should apply to ILECs only.[8] As Ameritech noted in its comments, there is no support for win-back restrictions in the language of the statute – much less for restrictions applicable to ILECs only.

First, it is clear that a win-back effort, with respect to the same services from which the CPNI was derived, is classic "in-category" use of that information and no customer consent – implied or otherwise – is required. Moreover, win-back efforts by any carrier provide customer benefits. Claims that any carrier's use of information about its customer's use of its services (CPNI) in an effort to win back the business of that customer somehow violates the

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[7] *See, e.g.*, AirTouch, AT&T, Cable and Wireless, Frontier, US West, BellSouth, SBC.

[8] *See, e.g.*, Cable and Wireless, e.spire, MCI, TRA.

Communication Act's prohibition against unreasonable and discriminatory practices[9] make no sense. The type of information that an ILEC would see is the same type of information any carrier would see in a win-back situation – information about the customer's use of the carrier's service. A prohibition against any carrier's use of that information to determine whether the customer might qualify for a better deal would only deny customers the benefits of more vigorous competition.

Obviously, as MCI notes, where an ILEC's retail operations obtains knowledge of a customer's leaving directly because the customer places the disconnect order, win-back efforts are clearly appropriate since there would be no use of any carrier proprietary information.[10] However, even in those circumstances in which an ILEC learns of a customer loss through an order placed by a competing carrier, it would be inappropriate to prohibit win-back efforts. It should be known that, despite specific allegations of potentially inappropriate behavior by "ILEC operational personnel",[11] in the case of an order for competing local exchange services placed by the CLEC itself, Ameritech's retail operations is notified of its customer "loss" in the same manner that other CLECs are notified when their customers are lost to the competitive efforts of other carriers. As noted in Ameritech's comments, while the identity of the new carrier chosen by the departing customer may be proprietary information of that particular carrier, the fact that the customer has left the ILEC cannot be information that is proprietary to the new carrier. In other words, the ILEC has a right to know that its customer has left. While it would be

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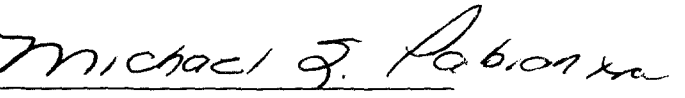
[9] *See, e.g.*, Allegiance Telecom at 10.

[10] MCI at 18-19.

[11] TRA at 7, MCI at 20-21.

inappropriate for the ILEC to target its marketing efforts only to customers who have left in favor of a particular other carrier, there is nothing inherently wrong with an ILEC marketing its services to those of its customers who have chosen any other carrier for all or a portion of their service. That is simply the essence of good competition.

Respectfully submitted,



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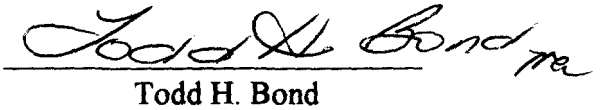
Dated: July 8, 1998
[MSP0159.doc]

CERTIFICATE OF SERVICE

I, Todd H. Bond, do hereby certify that a copy of the foregoing Reply Comments of Ameritech has been served on the parties listed on the attached service list, via first class mail postage prepaid, on this 8th day of July, 1998.

By: 

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